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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 RONNIE WINN,

12 Plaintiff,

13 v.

14 M. ZUNIGA,

15 Defendant.
16

No. 2:22-CV-0706-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Defendant's motion for clarification. See ECF No.
19 40. Plaintiff filed an opposition to the motion for clarification on September 30, 2024. See ECF
20 No. 41. Also before the Court is Defendant's motion to extend the discovery cut-off deadline. See
21 ECF No. 42.
22

23 **I. BACKGROUND**

24 **A. Plaintiff's Allegations**

25 This action proceeds on Plaintiff's original complaint. See ECF No. 1. Plaintiff
26 claims Defendant Zuniga violated his rights under the Eighth Amendment and First Amendment.
27 See id. at 3. Plaintiff had permission from Lieutenant Valadez to stay in the shade because
28 Plaintiff's "heat meds" were causing him dizziness, a known side effect in temperatures over

ninety degrees. See id. Valadez then instructed Plaintiff to call if Plaintiff was ordered to leave the shade. See id. at 4. However, Defendant Zuniga ordered Plaintiff and other inmates taking “heat meds” to leave the shade in contradiction to Valadez’s orders. See id. at 4-5. Plaintiff informed Defendant that Valadez gave Plaintiff permission to remain, and Defendant replied, “I don’t give a fuck what Sgt. Valadez said; stand up and put your hands behind your back!” Id. at 1, 5. Plaintiff complied, but Defendant placed handcuffs on Plaintiff “extremely tight.” Id. Defendant then “slammed Plaintiff’s head into the wall, while squeezing the handcuffs even tighter, stating, ‘You move again, and I will burst your fucking face and head all over this entire wall!’” Id. at 6. Plaintiff told Defendant he would “write him up” for assault, and Defendant grabbed him by the handcuffs, causing pain, and threatened to put Plaintiff in “the hole.” See id. at 6-7.

Plaintiff then alleges that Defendant made a false Rules Violation Report on June 18, 2019, claiming that Plaintiff resisted orders and attempted to strike Defendant. Id. at 7. Plaintiff denied any resistance against Defendant at the administrative hearing, and inmate witnesses also gave statements supporting Plaintiff’s lack of resistance. Id. at 8.

Plaintiff also claims Defendant retaliated against him in violation of the First Amendment because Plaintiff complained of tight handcuffs and threatened to file an inmate grievance against Defendant (described in Claim I.) Id. at 9. Plaintiff alleges Defendant’s response “would have chilled or silenced a person of ordinary firmness from pursuing or continuing to exercise his First Amendment rights.” Id. According to Plaintiff, he was placed into administrative segregation because of his protected activity. Id. at 10.

B. Procedural History

The Court determined service was appropriate on Defendant as to Plaintiff’s First Amendment retaliation claim and Eighth Amendment excessive force claim. See ECF No. 10. Defendant filed an answer on November 18, 2022. See ECF No. 19. On May 1, 2023, Plaintiff filed a motion to compel production of documents. See ECF No. 27. Defendant filed a response to the motion to compel on May 17, 2023. See ECF No. 28. On September 4, 2024, the Court granted in part and denied in part Plaintiff’s motion to compel. See ECF No. 38. The Court

1 granted the motion to compel as to request nos. 3, 4, and 5. See id. The decision was based on the
 2 finding that information is relevant under Federal Rule of Evidence 404(b) for one of several non-
 3 propensity inquiries and because “the requests do not seek confidential information insofar as
 4 each request relates to the existence of grievances filed with Defendant’s employer.” Id. at 5. The
 5 Court denied the motion to compel as to request no. 10 because Plaintiff did not state why
 6 Defendant’s response to that request was inadequate. See id. Additionally, the Court granted the
 7 motion to compel as to request no. 11 after balancing the competing interests of the parties. Id. at
 8 6.

9 In response to Defendant’s concern about confidentiality, the Court stated:

10 . . . [T]o the extent Defendant contends there exists an
 11 interest in maintaining the confidentiality of claims made against him by
 12 other inmates, there has been no showing in support of such protections
 13 and no effort to establish a protective order.

14 Id. at 6-7.

15 In response to the Court’s order granting in part the motion to compel, Defendant
 16 filed the pending motion for clarification on September 12, 2024. See ECF No. 40. Plaintiff filed
 17 an opposition to the motion for clarification on September 30, 2024. See ECF No. 41.

18 II. THE PARTIES' ARGUMENTS

19 A. Defendant’s position

20 Defendant requests clarification as to request nos. 3, 4, 5, and 11 regarding
 21 redaction of confidential or irrelevant information and the conditions of production. See ECF
 22 No. 40, pg. 1. As to request nos. 3, 4, 5, Defendant asks that the Court clarify whether
 23 Defendant can redact irrelevant or identifying information of third-party inmates because
 24 providing such information “raises privacy and safety concerns.” Id. at 3. In support of this
 25 request, Defendant cites two cases where the District Court ordered redaction of identifying
 26 information before requiring production. See id.; Ramirez v. Gutierrez No. 20-cv-1109-MMA
 27 (BLM), 2021 WL 4776332, at *6 (S.D. Cal. Oct. 12, 2021) (citing Lamon v. Adams, 2010 WL
 28 4513405, at *3-4 (E.D. Cal. Nov. 2, 2010)).

As to request no. 11, seeking portions of Defendant's personnel file as they relate to specific allegations, Defendant asks to limit Plaintiff's access to the responsive documents to the prison Litigation Coordinator's office and permission to redact personal identifying information of third-party officers and inmates. See id. at 4. Defendant asserts that the information is confidential and thus contraband and subject to seizure in violation of sections 30006(d) and 3321(a) of the California Code of Regulations. See id. (citing ECF No. 28 pg. 14-16). In support, Defendant cites Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th Cir. 1990), where the Ninth Circuit held that there exists a qualified privilege for official information, including personnel files, in federal common law. See id. Thus, Defendant requests that Plaintiff's access to such documents be restricted to the Litigation Coordinator's office and that Plaintiff not be allowed to bring copies to his cell nor distribute the files, or any copies. See ECF No. 40, pg. 4. Defendant also seeks to redact personal identifying information of third-party officers and inmates from the document. See id.

B. Plaintiff's Response

Plaintiff's response to Defendant's motion for clarification raises two issues. First, Plaintiff argues that Defendant should not be permitted to determine what information is relevant when redacting information. See ECF No. 41. Second, Plaintiff asserts that Defendant's request to limit production of relevant portions of Defendant's personnel file to Plaintiff accessing such document in the prison litigation office first requires the Court to determine that information is privileged and second requires a motion for protective order. See id. To the first point, Plaintiff argues that Defendant should not have "the power to determine what is relevant or not in this case." Id. at 2.

As to the manner of production, Plaintiff argues that for the Court to restrict Plaintiff's access to documents, the Court must first make the determination that such documents are privileged, citing Jones v. McElroy, No. 2:13-CV-1375 GEB, 2015 WL 1014653 (E.D. Cal. Mar. 5, 2015) in support. See id. at 2-3. Additionally, Plaintiff cites Soto v. City of Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995), where the district court held that when "a defendant meets the threshold requirements, the court will . . . balance each party's interests." ECF No. 41, pg. 3.

1 Plaintiff asserts that the Court already conducted a balancing test of the parties' interests and
2 found there was "no showing in support of such protections and no effort to establish a protective
3 order." Id. at 3 (citing ECF No. 38 pg. 9). Thus, Plaintiff concludes "that Defendant's remedy is
4 to seek a protective order, not administrative clarification." Id.

6 III. DISCUSSION

7 A. Redaction

8 Defendant seeks to redact personal identifying information of inmates and third-
9 party officers, not Defendant, from documents responsive to request nos. 3, 4, 5, and 11 to resolve
10 privacy and safety concerns. As Plaintiff's opposition notes, Defendant's motion for clarification
11 requests that Defendant be permitted to redact "portions of the document that are confidential or
12 not relevant." ECF No. 40, pg. 1. This request will be denied. The Court's prior order addressed
13 the relevance of the requested documents and ruled such documents are relevant for non-
14 propensity purposes. See ECF No. 38 pgs. 5-6. Indeed, the Court was clear in that ruling that
15 documents responsive to request no. 11 be limited to documents which evidence claims against
16 Defendant arising out of the seven enumerated categories: (1) filing false reports, (2) use of
17 excessive force, (3) retaliation, (4) medical indifference, (5) perjury, (6) false statements,
18 falsifying evidence, and (7) issuing false Rule Violation Reports, within the period of June 18,
19 2014, through June 18, 2019. See ECF No. 38, pgs. 6-8. Defendant is not required to disclose
20 Defendant's entire personnel file. Given that the Court already made a definitive ruling about the
21 relevance of the documents, Defendant cannot redact information on the basis of relevance.

22 Defendant's motion, however, raises a valid concern for the privacy and safety of
23 other inmates and officers. Defendant offers case law in support of redacting of personal
24 identifying information for such reasons and Defendant made a sufficient showing of such a need
25 in their initial filing. See ECF No. 28. Therefore, the Court concludes it is proper for Defendant to
26 redact personal identifying information of third parties prior to production. Such redactions must
27 be limited to personal identifying information for inmates other than Plaintiff and officers other
28 than Defendant. This includes names, any identification numbers, or similar information.

1 Redacting such information will protect the third-party individuals and the integrity of the
2 grievance process without hindering Plaintiff's meaningful access to such documents.

3 **B. This motion will be construed as a motion for protective order.**

4 Defendant next seeks a protective order to limit Plaintiff's access to documents
5 responsive to request no. 11 to the Litigation Coordinator's office and a restriction barring
6 Plaintiff from copying or distributing said documents. See ECF No. 40, pg. 4. Plaintiff opposes
7 this motion, arguing that such a restriction requires the Court to determine such information is
8 privileged and that Defendant's current motion for clarification is an improper use of an
9 administrative motion. See ECF No. 41, pg. 3. Beginning with Plaintiff's argument that a motion
10 for clarification is not the proper avenue for Defendant to restrict the manner of production, the
11 Court looks to the Local Rules for guidance. Eastern District of California Local Rule 141
12 outlines the procedure for protective orders and Rule 141(c) requires that proposed protective
13 orders contain:

- 14 (1) A description of the types of information eligible for protection under
15 the order, with the description provided in general terms sufficient to
16 reveal the nature of the information (e.g., customer list, formula for soda,
17 diary of a troubled child);
18 (2) A showing of particularized need for protection as to each category of
19 information proposed to be covered by the order; and
20 (3) A showing as to why the need for protection should be addressed by a
21 court order, as opposed to a private agreement between or among the
22 parties.

23 E. Dist. Cal. L.R. 141(c).

24 While Defendant filed an administrative motion for clarification, not a motion for
25 a protective order, Defendant's filing and Plaintiff's opposition satisfy all three requirements of a
26 proposed protective order. Defendant argues that: (1) request no. 11, portions of Defendant's
27 personnel file, is eligible for a protective order, and (2) a personnel file is privileged and presents
28 a risk to institutional safety if it were "disseminated to the larger prison population." See ECF No.
29 28 pgs. 6, 16. Third, Defendant argues that Plaintiff's filing in opposition demonstrates Plaintiff
30 is not interested in a private agreement in lieu of a Court issued protective order. See ECF No. 41.

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Another possible concern about Defendant filing a motion for administrative relief as opposed to requesting a protective order is prejudice to Plaintiff. Administrative motions require the non-moving party to file an opposition or supporting statement within five days after the motion is filed. See E. Dist. Cal. L.R. 233 (b). Here, Plaintiff filed the opposition more than five days after Defendant's motion. See ECF No. 41. To prevent potential prejudice against Plaintiff, the Court has considered and addressed Plaintiff's opposition herein. Given that the requirements of a protective order are satisfied, and that Plaintiff is not prejudiced, the Court will construe Defendant's administrative motion as a motion for a protective order.

C. Manner of production

Defendant requests that Plaintiff's access to documents responsive to request no. 11 be restricted to viewing and reviewing in the Litigation Coordinator's office and that Plaintiff not be permitted to make or distribute originals or copies of the documents. See ECF No. 40. Plaintiff contends that the Court must first determine this information is privileged before issuing a protective order. ECF No. 41, pgs. 2-3. Defendant's opposition to the motion to compel cites case law holding that personnel files are official information that may qualify as privileged under federal common law. See ECF No. 28, pg. 6 (citing Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th Cir. 1990)). Sanchez does not confer a general privilege over all government personnel files but directs courts to "weigh the potential benefits of disclosure against the possible disadvantages." Sanchez at 1033-1034. Plaintiff is correct that this Court did conduct such a balancing test and concluded "the greater prejudice would be to deny otherwise appropriate discovery." ECF No. 38 pg. 7.

However, the "threshold showing" Plaintiff seeks to impose on Defendant's protective order is a standard for barring production entirely, not the standard for whether to impose a protective order. See Soto v. City of Concord, 162 F.R.D. 603 (N.D. Cal. 1995) (citing Kelly v. San Jose, 114 F.R.D. 653 (N.D. Cal. 1987)). Indeed, one of the elements required for this "threshold showing" is a showing that a protective order would not sufficiently resolve privacy concerns. Id. at 613. In Soto, the court decided the privilege did not extend to the requested files and ordered Plaintiff to turn the files over but did so subject production to a

1 protective order. See id. at 617.

2 Here, the Court affirms its previous decision to order disclosure of documents
3 responsive of request no. 11, but the Court recognizes that the manner of production Defendant
4 seeks can be, as discussed above, considered a request for a protective order. Such an order
5 does not bar disclosure, but rather imposes restrictions on access, reproduction, and
6 dissemination. The Court finds this manner of production to satisfy both the disclosure of
7 discovery and the safety concerns Defendant raises. Plaintiff will be given meaningful access
8 to documents responsive to request no. 11 at the Litigation Coordinator's office and be
9 permitted to take notes so Plaintiff can prepare this case. However, the Court requires said
10 documents to stay in that office, not be copied, and bars dissemination of the documents, or
11 copies, to others. This is in accordance with Soto, where the Court required disclosure subject
12 to a protective order. See Soto at 617.

13 14 IV. CONCLUSION

15 Accordingly, IT IS HEREBY ORDERED as follows:

16 1. Defendant's motion for clarification, ECF No. 40, is granted as to the
17 redaction of personal identifying information of third parties for documents responsive to request
18 nos. 3, 4, 5, and 11. Documents responsive to these requests are to be produced without further
19 objection within 30 days of the date of this order.

20 2. Defendant's motion for clarification, ECF No. 40, is denied as to the
21 redaction of irrelevant information for documents responsive to request nos. 3, 4, 5, and 11.

22 3. Defendant's motion for clarification, ECF No. 40, is granted as to the
23 manner of production and Plaintiff's access to documents responsive to request no. 11. Such
24 documents shall be made available to Plaintiff for inspection in the prison Litigation
25 Coordinator's office, where Plaintiff is permitted to take notes on said documents and bring them
26 with him elsewhere but cannot make copies nor disseminate originals or copies of said documents
27 to others.

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1 4. Defendant's motion for an extension of time to conduct discovery, ECF No.
2 42, is granted.

3 5. Except for the discovery addressed herein as well as the taking of Plaintiff's
4 deposition, discovery in this case is closed.

5 6. For the discovery addressed herein and the taking of Plaintiff's deposition,
6 the discovery cut-off deadline is extended to January 6, 2025.

7 7. Dispositive motions are due by April 7, 2025.

8
9 Dated: November 20, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE